

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

PROFESSIONAL HOSPITAL SUPPLY, INC.

Employer

and

Case 21-RC-19904
(Formerly 27-RC-7839)

WHOLESALE AND RETAIL FOOD DISTRIBUTION,
LOCAL 63, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, on April 3, 1998, a Decision and Order was issued dismissing the instant petition, concluding that the unit sought by the Petitioner was not an appropriate one.¹ Thereafter, on April 21, 1998, the Petitioner timely filed a request for review with the Board in Washington. By Order dated May 3, 1999, the Board reversed the dismissal of the petition, finding that the petitioned-for unit of drivers does constitute an [Board's emphasis] appropriate unit within the meaning of Section 9(b) of the Act. Thus, the Board remanded this case for further appropriate action, including the processing of the petition. Based on the Board's Order, and

based upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate² for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full and regular part-time drivers employed by Professional Hospital Supply, Inc. at its Temecula, California facility; excluding all other employees, including office clerical employees, guards, and supervisors as defined in the Act.

¹ The case was temporarily transferred to Region 27 for drafting of the Decision.

² The unit description is based upon the unit found appropriate after the hearing and Board's Order.

Based on the Board's determination that the petitioned-for unit of drivers constitutes an [Board's emphasis] appropriate bargaining unit, I shall direct an election in the petitioned-for unit.

There are approximately 26 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Wholesale and Retail Food Distribution, Local 63, International Brotherhood of Teamsters, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before June 1, 1999. No extension of time to file the list shall be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to file the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules

and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on June 8, 1999.

DATED at Los Angeles, California, this 25th day of May, 1999.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board